(3)
CH/07

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.3692 OF 2003

BETWEEN

Dwarika Prasad Choubey S/o Late Shri Kalpdhari Choubey, aged about 50 years, occupation Government service, working as Assistant Teacher, Primary School Radha Nagar, presently at Madhyamik Shala Marma, resident of Village Radha Nagar, P.S. CHALGALI, Tehsil Pal, District Surguja (CG).

PETITIONER

P.R. No. 3485/03
Presented by Shri Anup Dhrao
dated 07/11/03

A N D

The State of Chhattisgarh,
Through the Secretary Department of Tribal Welfare,
Mantralay, D.K.S.Building, Raipur (CG).

2. The State of Chhattisgarh,
Through the Secretary Department of Health and Family Planning, D.K.S.Building, Raipur (CG).

3. The Collector, Surguja,
District Surguja (CG).

4. Sub Divisional Officer & Project Administrator,
Eakikrit Aadivasi Vikas Pariyojna, Pal,
Ramanujganj, District Surguja (CG).

5. Block Education Officer, Ramchandrapur
District Surguja (CG).

6. Block Medical Officer,
Primary Health Centre Ramanugjang, District Surguja (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioner :
As stated in the cause title above .

2. Particulars of the Respondents :
As stated in the cause title above.

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(48)

आदेश पत्रक

W.P. No. 3692/03

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2.1.2004 Shri Arun Shukla, Advocate for the petitioner. Shri Ranbir Singh, Govt. Advocate, for respondents No. 1 to 5. Heard on admission. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, being aggrieved by the order dated 30.1.2003 Annexure P/1, passed by the Sub Divisional Officer and Project Administrator, Integrated Tribal Development Project, Ramanujganj by which one increment out of two increments granted to the petitioner in lieu of family planning Laproscope's Tubectomy (L.T.T.) operation having undergone by his wife Smt.. Pramila Devi, has been withdrawn and the amount already disbursed to the petitioner has been directed to be recovered in 18 installments. The petitioner's case is that he is working as Assistant Teacher, his wife Smt. Pramila Devi gave birth to the second child in the year 1981. Thereafter his wife Smt. Pramila Devi had undergone the Family Planning Operation on 15.11.1986 at Dhamani Camp organized by the respondents No. 2 and 6 and a certificate to that effect was issued by the respondent No.6, which is Annexure P/2. After undergoing the operation by his wife, the petitioner moved for grant of two increments and the petitioner was granted two increments by the concerned authority in view of the order dt. 29.1.1979 issued by the General Administration Department of the State of Madhya Pradesh under the Government Scheme for the family planning operation. However after the said L.T.T. operation the petitioner's wife	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(49)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

delivered one female child on 15.5.1987 and the second child on 17.3.1988, certificates to that effect are Annexure P/5 and P/6. However, some complaint was made against the petitioner to the respondent No.4 that even after family planning operation, the petitioner's wife has delivered two children. A show cause notice was issued to the petitioner by the concerned authority. The petitioner appeared before the concerned authority and made oral submissions. But without taking into consideration the oral submissions the concerned authority has passed the order Annexure P/1 which is arbitrary and illegal.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submitted that under the Govt. scheme the petitioner's wife had undergone L.T.T. operation and a certificate to that effect was issued by the concerned doctor which is Annexure P/2 and accordingly the benefit of two increments was granted to the petitioner. If that operation has failed and the petitioner's wife delivered another two children i.e. one in the year 1987 and another in the year 1988 then the petitioner is not responsible for that and the respondent/authority ought not to have withdrawn increment granted to the petitioner.

On the other hand learned Govt. Advocate submitted that the purpose behind granting increments to the Govt. employees under the family planning scheme is to control the population growth and the object of the scheme has been defeated in this matter as the wife of petitioner has delivered two children even after grant of two increments therefore the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(50)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondent/authority has rightly withdrawn only one increment out of two increments granted to the petitioner.

The petitioner took the benefit of two increments under order dated 29.1.1979 of State of M.P. on the ground that his wife had undergone the L.T.T. operation for family planning on 15.11.86 but after that operation the petitioner's wife delivered two children one in the year 1987 and other in the year 1988. The order dated 29.1.1979 was issued by the State Government to encourage the Govt. employees for adopting the family planning measures to control the population growth. But the very object to control the population growth stood defeated by the conduct of the petitioner because even after grant of two increments to the petitioner, his wife delivered two children. Even after petitioner came to know about the failure of L.T.T. operation of his wife in the year 1987 as his wife delivered one child, he did not care and had not taken necessary steps for family planning and conducted himself in such a way that his wife delivered the second child in the year 1988. The main and ultimate object behind the introduction of the scheme to grant two increments was to ensure that no further child is added to the family of concerned employee and if on account of failure of the operation that object is not achieved then petitioner disentitled himself from that benefit as the basis of the grant of increment was to ensure that no child is added to the family of concerned employee and not only to see that the petitioner's wife had undergone L.T.T. operation whether the same is successful or not. Therefore in the circumstances petitioner disentitled himself from the benefit granted to

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(51)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम
	him by defeating the very purpose of the order ~~under which the Govt. issued order dated~~ 29.1.1979 for controlling population growth. Therefore, in the facts impugned order withdrawing only one increment out of two increments cannot be said to be arbitrary, irrational or illegal. As such, I do not find any merit in this petition the same is liable to be dismissed and it is dismissed. Sd/- L.C. Bhadoo Judge	

[पीछे देखिये